

78A-6-106 Search warrants and subpoenas -- Authority to issue -- Protective custody -- Expedited hearing.

- (1) The court has authority to issue search warrants, subpoenas, or investigative subpoenas in criminal cases, delinquency, and abuse, neglect, and dependency proceedings for the same purposes, in the same manner and pursuant to the same procedures set forth in the code of criminal procedure for the issuance of search warrants, subpoenas, or investigative subpoenas in other trial courts in the state.
- (2) A peace officer or child welfare worker may not enter the home of a child who is not under the jurisdiction of the court, remove a child from the child's home or school, or take a child into protective custody unless:
 - (a) there exist exigent circumstances sufficient to relieve the peace officer or child welfare worker of the requirement to obtain a warrant;
 - (b) the peace officer or child welfare worker obtains a search warrant under Subsection (3);
 - (c) the peace officer or child welfare worker obtains a court order after the parent or guardian of the child is given notice and an opportunity to be heard; or
 - (d) the peace officer or child welfare worker obtains the consent of the child's parent or guardian.
- (3)
 - (a) The court may issue a warrant authorizing a child protective services worker or peace officer to search for a child and take the child into protective custody if it appears to the court upon a verified petition, recorded sworn testimony or an affidavit sworn to by a peace officer or any other person, and upon the examination of other witnesses, if required by the judge, that there is probable cause to believe that:
 - (i) there is a threat of substantial harm to the child's health or safety;
 - (ii) it is necessary to take the child into protective custody to avoid the harm described in Subsection (3)(a)(i); and
 - (iii) it is likely that the child will suffer substantial harm if the parent or guardian of the child is given notice and an opportunity to be heard before the child is taken into protective custody.
 - (b) Pursuant to Section 77-23-210, a peace officer making the search may enter a house or premises by force, if necessary, in order to remove the child.
 - (c) The person executing the warrant shall then take the child to the place of shelter designated by the court or the division.
- (4)
 - (a) Consistent with Subsection (5), the court shall hold an expedited hearing to determine whether a child should be placed in protective custody if:
 - (i) a person files a petition under Section 78A-6-304;
 - (ii) a party to the proceeding files a "Motion for Expedited Placement in Temporary Custody"; and
 - (iii) notice of the hearing described in this Subsection (4)(a) is served consistent with the requirements for notice of a shelter hearing under Section 78A-6-306.
 - (b) The hearing described in Subsection (4)(a):
 - (i) shall be held within 72 hours, excluding weekends and holidays, of the filing of the motion described in Subsection (4)(a)(ii); and
 - (ii) shall be considered a shelter hearing under Section 78A-6-306 and Utah Rules of Juvenile Procedure, Rule 13.
- (5)
 - (a) The hearing and notice described in Subsection (4) are subject to:
 - (i) Section 78A-6-306;
 - (ii) Section 78A-6-307; and

- (iii) the Utah Rules of Juvenile Procedure.
- (b) After the hearing described in Subsection (4), a court may order a child placed in the temporary custody of the division.
- (6) When notice to a parent or guardian is required by this section:
 - (a) the parent or guardian to be notified must be:
 - (i) the child's primary caregiver; or
 - (ii) the parent or guardian who has custody of the child, when the order is sought; and
 - (b) the person required to provide notice shall make a good faith effort to provide notice to a parent or guardian who:
 - (i) is not required to be notified under Subsection (6)(a); and
 - (ii) has the right to parent-time with the child.

Renumbered and Amended by Chapter 3, 2008 General Session